

the bounds of reasonable judgment; hence, in general, a court does not favor a construction which confers arbitrary or capricious authority on the trustee. The general duty of a trustee to exercise reasonable care and judgment requires that even a broad discretion be exercised upon judicious and responsible consideration, subject to review by the supreme court for abuse of discretion. *In re Trust of Salimes*, 43 W (2d) 140, 168 NW (2d) 157.

**231.40 History:** 1957 c. 300; Stats. 1957 s. 231.40; 1961 c. 49, 651; 1969 c. 283.

**Editor's Note:** For foreign decisions construing the "Uniform Principal and Income Act" consult Uniform Laws, Annotated.

The provision in 231.40 (5) (a) that all dividends on shares of a corporation forming a part of the principal which are payable in the shares of the corporation shall be deemed principal, is not unconstitutional as applied to stock dividends received subsequent to the passage of the act by the trustee of a previously existing testamentary trust. *Will of Allis*, 6 W (2d) 1, 94 NW (2d) 226.

Trustees who were also the life beneficiaries of the trust were not empowered under a clause permitting them discretionary authority to determine how receipts were to be apportioned as between principal and interest to assign to themselves gain realized on the sale of capital assets which were part of the trust corpus. *Will of Clarenbach*, 23 W (2d) 71, 126 NW (2d) 614.

Probate and trust accounting problems. *Inding*, 46 MLR 458.

Tax accounting problems of trustees. *Hinners*, 47 MLR 147.

Discretionary power to allocate receipts to income or principal; abuse of discretion. 48 MLR 262.

The creation of general and specific bequests of securities and the rules for the distribution of accessions to securities. *Dunaj*, 52 MLR 271.

Discretion of trustees to allocate receipts as income or principal. *Wydeven*, 1965 WLR 391.

**231.45 History:** 1959 c. 259; Stats. 1959 s. 231.45; 1965 c. 156; 1969 c. 276 s. 598 (1); 1969 c. 283, 483.

**231.46 History:** 1961 c. 403; Stats. 1961 s. 231.46; 1969 c. 283.

**231.47 History:** 1961 c. 403; Stats. 1961 s. 231.47; 1969 c. 283.

Pouring over into testamentary trust of another. 45 MLR 463.

**231.49 History:** 1931 c. 173; Stats. 1931 s. 207.15; 1933 c. 487 s. 244a; Stats. 1933 s. 206.52; 1955 c. 73 s. 1, 2; 1955 c. 586; 1963 c. 269; Stats. 1963 s. 231.49; 1969 c. 283; 1969 c. 339 s. 27.

Testamentary nature of revocable inter vivos and life insurance trusts. 1956 WLR 313.

**231.50 History:** 1961 c. 407; Stats. 1961 s. 231.50; 1969 c. 283; 1969 c. 285 s. 26; 1969 c. 339 s. 27.

Termination of inter vivos trusts under state law and the internal revenue code, section 2038. *Leary*, 47 MLR 323.

Revocation of inter vivos trusts under 231.50. *Bauhs*, 48 MLR 376.

**231.51 History:** R. S. 1849 c. 58 s. 14; R. S. 1858 c. 85 s. 14; R. S. 1878 s. 2113; Stats. 1898 s. 2113; 1925 c. 4; Stats. 1925 s. 232.13; 1965 c. 52; Stats. 1965 s. 231.51; 1969 c. 283.

**231.52 History:** 1949 c. 333; Stats. 1949 s. 232.496; 1965 c. 52; Stats. 1965 s. 231.52; 1969 c. 283.

**231.55 History:** 1965 c. 65; 1965 c. 433 s. 114; Stats. 1965 s. 231.55; 1969 c. 283.

**231.60 History:** 1963 c. 541; Stats. 1963 s. 231.60; 1969 c. 283.

## CHAPTER 232.

### Powers of Appointment.

**Editor's Notes:** (1) Ch. 232, Stats. 1963, on powers of appointment, except secs. 232.13, 232.496, 232.52, 232.53 and 232.56, was repealed and recreated by ch. 52, Laws 1965. Sec. 232.13 was renumbered 231.51; sec. 232.496 was renumbered 231.52; sec. 232.52 was renumbered 230.16; sec. 232.53 was renumbered 230.17; and sec. 232.56 was renumbered 235.525. The legislative histories of the sections comprising ch. 232, before 1965, and notes of decisions construing some of the sections will be found in Wis. Annotations, 1960. The notes of the committee of the State Bar of Wisconsin which prepared ch. 52, Laws 1965, are on file in the Legislative Reference Library; Professor Richard W. Effland of the Law School of the University of Wisconsin served as research reporter to the committee.

(2) The legislative histories which follow start with citations of ch. 52, Laws 1965, and include the effects of ch. 334, Laws 1969. Under the terms of ch. 334, the several sections of ch. 232 are restated in the revised property law, effective July 1, 1971. For more detailed information concerning the effects of ch. 334, see the editor's note printed in this volume ahead of the histories for ch. 700.

**232.01 History:** 1965 c. 52; Stats. 1965 s. 232.01; 1969 c. 334.

Powers of appointment; the new Wisconsin law. *Effland*, 1967 WLR 583.

**232.02 History:** 1965 c. 52; Stats. 1965 s. 232.02; 1969 c. 334.

**232.05 History:** 1965 c. 52; Stats. 1965 s. 232.05; 1969 c. 334.

**232.07 History:** 1965 c. 52; Stats. 1965 s. 232.07; 1969 c. 334.

**232.09 History:** 1965 c. 52; Stats. 1965 s. 232.09; 1969 c. 334.

**232.11 History:** 1965 c. 52; Stats. 1965 s. 232.11; 1969 c. 334.

**232.13 History:** 1965 c. 52; Stats. 1965 s. 232.13; 1969 c. 334.

**232.15 History:** 1965 c. 52; Stats. 1965 s. 232.15; 1969 c. 334.

**232.17 History:** 1965 c. 52; Stats. 1965 s. 232.17; 1969 c. 334.

**232.19 History:** 1965 c. 52; Stats. 1965 s. 232.19; 1969 c. 334.

**232.21 History:** 1965 c. 52; Stats. 1965 s. 232.21; 1969 c. 334.

### CHAPTER 233.

#### Dower and Curtesy.

**233.01 History:** R. S. 1849 c. 62 s. 1; R. S. 1858 c. 89 s. 1; R. S. 1878 s. 2159; Stats. 1898 s. 2159; 1921 c. 99; 1925 c. 4; Stats. 1925 s. 233.01; 1959 c. 268; 1969 c. 339.

**Editor's Note:** The legislative histories which follow are the histories of the several sections of ch. 233 through 1969, including the effects of ch. 339, Laws 1969. Various provisions of ch. 233 are restated in a new probate code, effective April, 1971. For more detailed information concerning the effects of ch. 339, Laws 1969, see the editor's note printed in this volume ahead of the histories for ch. 851.

A divorce cuts off the right of dower. *Burdick v. Briggs*, 11 W 126.

An inchoate right of dower is such an interest in land as will enable the wife to maintain an action to establish it and remove a cloud fraudulently attempted to be created upon it. A wife acquires, on marriage, an inchoate right of dower in lands of her husband which cannot be defeated by an oral agreement for their sale entered into before marriage. *Madigan v. Walsh*, 22 W 501.

The general presumption that a widow is entitled to dower in all land of which her husband was seized at any time during marriage would prevail against one claiming under a foreclosure of the husband's mortgage, unless it should appear that the mortgage was executed by her or was given before her marriage or was for purchase money of land. *Foster v. Hickox*, 38 W 408.

The receipt of an allowance out of the personal estate of the husband pending administration does not impair the right of dower, which includes one-third of the rents and profits accruing between his death and assignment of dower from the real estate to which such dower right attaches. Where the estate is solvent, the extent of the dower undisputed and the administrator has in his hands rents accruing from the real estate he may be directed to pay the widow her one-third thereof before dower is assigned. *Farnsworth v. Cole*, 42 W 403.

The acceptance by a wife of a deed to the fee merges her inchoate right of dower in the fee. *Scheuer v. Chloupek*, 130 W 72, 109 NW 1035.

Where a wife joins her husband in a deed of his land, which deed is fraudulent and void as to creditors, her right to dower is revived as against such creditors or their assigns when such deed is set aside. The fact that the wife participated in the fraud does not change this rule. *Huntzicker v. Crocker*, 135 W 38, 115 NW 340.

Where a husband had only a contract right to purchase property and before he acquired the title made a contract to convey, such latter contract could be specifically enforced without reference to any dower rights of the wife. *Inglis v. Fohey*, 136 W 28, 116 NW 851.

A devisee who, under the will, took a vested remainder in fee in land of the testator, subject only to a life estate and to a subsequent trust limited to 10 years, and who died after the life estate had ended, was during his life "seised of an estate of inheritance" within the meaning of sec. 2159, Stats. 1898, and such estate being a legal estate as against all persons except the trustees, whose term was for years only, his widow was entitled to dower. *Will of Prasser*, 140 W 92, 121 NW 643.

The facts were sufficient to estop a wife from claiming dower in lands conveyed by her husband after a pretended divorce and remarriage. *H. W. Wright L. Co. v. McCord*, 145 W 93, 128 NW 873.

The widow and heirs of a decedent are tenants in common until the assignment of dower, and prior to such assignment the widow has no vested freehold estate. *Estate of Johnson*, 175 W 248, 185 NW 180.

A wife's inchoate right of dower is a valuable right, and a release of it was a valid consideration, to the extent of such value, for a mortgage executed to the wife for the purchase price of her husband's land when she knew that the conveyance of the land rendered him insolvent. *Share v. Trickle*, 183 W 1, 197 NW 329.

The widow's dower and homestead rights, which came to her on the decedent's death, could not be used by the tortfeasor to offset the widow's pecuniary damages caused by the death. *Schmutzler v. Brandenberg*, 240 W 6, 1 NW (2d) 775.

The widow's interest in the homestead should be denominated in a judgment of the county court as "homestead rights," and not as a "life interest," since it would be extinguished if she should remarry. *Will of Uihlein*, 264 W 362, 59 NW (2d) 641.

Where the husband had only a contractual right based on his individual interest in a land contract signed by him as purchaser but not signed by his wife, and he was in default, she had no interest arising out of her rights in dower or otherwise. *Olsen v. Ortell*, 264 W 468, 59 NW (2d) 473.

A lien for federal income tax claimed due from a deceased husband cannot affect the widow's dower interest in real property. *United States v. Ettelson*, 67 F Supp. 257.

**233.02 History:** R. S. 1849 c. 62 s. 21; R. S. 1858 c. 89 s. 21; R. S. 1878 s. 2160; Stats. 1898 s. 2160; 1925 c. 4; Stats. 1925 s. 233.02; 1969 c. 339.

The language of sec. 2160, Stats. 1898, "residing out of this state" refers, not to the time of the husband's death, but to the time of conveyance of the land by him without her signature. She may be "residing out of this state" even though her husband be a resident of Wisconsin. *Ekergren v. Marcotte*, 159 W 539, 150 NW 969.

**233.03 History:** R. S. 1849 c. 62 s. 2; R. S. 1858 c. 89 s. 2; R. S. 1878 s. 2161; Stats. 1898 s. 2161; 1925 c. 4; Stats. 1925 s. 233.03; 1969 c. 339.

**233.04 History:** R. S. 1849 c. 62 s. 3; R. S. 1858 c. 89 s. 3; R. S. 1878 s. 2162; Stats. 1898 s. 2162; 1925 c. 4; Stats. 1925 s. 233.04; 1969 c. 339.